

**REMARKS/ARGUMENTS**

This paper is intended as a full and complete response to the Office Action dated November 17, 2005, having a shortened statutory period for response set to expire on February 17, 2006.

Claims 1, 5, 9, 12, 15, 17, 20, 23, 24, 28, and 35 are amended in the Application.

Claim 19 has been withdrawn in the Application

Claims 1-18 and 20-37 are pending in the Application.

**I. Claims Objections**

The Office Action objected to Claims 1, 9, 17, 20, 23, and 28 for informalities.

Applicant believes that Claims 1, 9, 17, 20, 23, and 28 have been amended in such a manner to obviate the informalities. Reconsideration of the objection is respectfully requested in view of the amended Claims. Applicant believes that no new matter has been added with any amendments that have been made.

**II. Claim Rejections 35 USC § 112**

The Office Action rejected claims 1, 5, 9, 12, 15, 20, 24, and 35 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant believes that Claims 1, 5, 9, 12, 15, 20, 24, and 35 have been amended in such a manner to obviate the informalities. Reconsideration of the rejection is respectfully requested in view of the amended Claims. Applicant believes that no new matter has been added with any amendments that have been made.

**IV. Claim Rejections 35 USC § 103**

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Application Number 10/725,610  
Response to Office Action dated November 17, 2005

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The Office Action rejected Claims 1-6, 8-25 and 27-37 under 35 USC § 103(a) as being anticipated by *Lumpur, K* (2001).

*Lumpur, K* does not disclose an invention that Tishcon USA has reduced to practice. The article *Lumpur, K* does not accurately reflect the ideas or products that Tishcon sells or manufactures. Evidence of this can be found in Attachment A, a printout of the website of Tishcon (<http://www.tishcon.com> last access 3/16/2006). As shown in the second paragraph, "We are the source for a full and complete line of vitamin and health supplements – tablets, softgels, hard gelatin capsules and powders, for generic and proprietary products..." (<http://www.tishcon.com> last access 3/16/2006). Nowhere in this website, nor through a conversation with Tishcon representatives could a beverage made by Tishcon be ascertained.

Applicant's Application deals with a perioperative multivitamin protein beverage (Applicant's Application Claim 1). It does not associate itself with tablets, softgels, hard gelatin capsules and powders. Therefore it would not have been obvious for a person having ordinary skill in the art to manufacture a perioperative multivitamin protein beverage and additive for use in preparing an individual for fast surgical recovery.

Claims 2-6, 8-25 and 27-37 depend upon independent Claim 1, and therefore includes all of the limitations thereof. Since Applicant believes that independent Claim 1 is patentably distinct from *Lumpur, K*, Claims 2-6, 8-25 and 27-37 are patentably distinct from *Lumpur, K* as well. Applicant believes no new subject matter has been added. Reconsideration of the rejection to the Claims in view of the remarks is respectfully requested.

The Office Action rejected Claims 7 and 26 under 35 USC § 103(a) as being unpatentable over *Lumpur, K* (2001) as applied to Claims 1-6, 8-25, and 27-37 above, and further in view of *Bell et al.* (US 5,968,896 A).

In order for two references to be combined in a such a manner that a 35 USC § 103(a) rejection is sustained there needs to be some inherent teaching that would cause one of ordinary skill in the art to determine a reasonable expectation of success in producing the claimed invention. It would not have been *prima facie* obvious for *Bell et al.* to be combined with *Lumpur, K*.

*Lumpur, K* deals with ~~tablets, softgels~~, hard gelatin capsules and powders as stated above. *Bell et al.* deals the preferred form of "non-baked extruded nutritional bar" (*Bell et al.* Column 2 lines 58-64). It is stated in *Bell et al.* that the "nutritional supplement can be made in a variety of forms, such as baked goods (e.g., cookies, brownies, fudge, cake, breads, biscuits, crackers), puddings, confections (i.e., candy), snack foods (e.g., pretzels, chips), ice cream, frozen confections and novelties, or non-baked, extruded food products such as bars" (*Bell et al.* Column 2 lines 58-64).


It is not obvious for one skilled in the art to combine non-baked nutritional bars with tablets, softgels, hard gelatin capsules and powders to obtain a liquid perioperative multivitamin protein beverage.

In addition, Claims 7 and 26 depend upon independent Claim 1, and therefore includes all of the limitations thereof. Since Applicant believes that independent Claim 1 is patentably distinct from *Lumpur, K* in view of *Bell et al.*, Claims 7 and 26 are patentably distinct from *Lumpur, K* in view of *Bell et al.* as well. Applicant believes no new subject matter has been added. Reconsideration of the rejection to the Claims in view of the remarks is respectfully requested.

Applicant appreciates the Examiner's time and attention to this matter. Applicants believe Claims as now provided are in condition for allowance. Reconsideration of this application is respectfully requested. The Applicant invites the Examiner to contact the Applicant's representatives (713.403.7411) if any questions concerning this Application arise.

Respectfully submitted,

Date: 3-16-06

  
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# ATTACHMENT A

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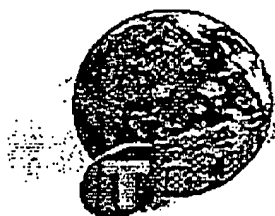
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### HEADLINES:

- Tishcon Corp. Donates Over 6 Million Kids' Vitamins to Vitamin Relief USA For Hurricane Relief
- Vitamin Relief USA(TM) Gives Thanks for Tishcon Corp
- Seven Q-Gel products receive USP verified status.
- Tishcon obtains Orphan Drug Designation for Ubiquinol from the US FDA. The designation is for the use of Ubiquinol in the treatment of Pediatric Congestive Heart Failure.
- Tishcon obtains Orphan Drug Designation for Ubiquinol from the US FDA. The designation is for the use of Ubiquinol in the treatment of Huntington's disease.
- NSF International, The Public Health and Safety Company(tm), announces certification of Gel-Tec's Q-Gel® dietary supplement product line. Gel-Tec® is a division of Tishcon Corporation. This certification verifies that the product line meets label and safety claims and includes the following brands: Q-Gel®, Q-Gel® Forte, Q-Gel® Ultra and Q-Gel® Mega dietary supplements.
- Tishcon donates 1 million children's chewable multivitamins to "Vitamin Angels" for distribution to the children of Iraq
- Tishcon donates 26 million children's chewable vitamin supplement tablets (500,000 bottles) and two million adult multivitamin tablets (1 million packets) annually to The Healthy Foundation.
- Results of ConsumerLab.com Coenzyme Q10 tests published
- Derma Q-Gel cream now available — click here for details
- Q-Gel Patent Granted - US Patent no. 6,056,971
- Tishcon obtains Orphan Drug Designation for Coenzyme Q10 from the US FDA. The designation is for the use of CoQ10 in the treatment of Mitochondrial Cytopathies.
- USP/NF publishes final monographs for Coenzyme Q10 (ubidecarenone) and its dosage forms.
- Additional patents granted (U.S. Patent Numbers 6,300,377 and 6,441,050)

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**NEWS:**

- **A Hearty Nutrient? – ABCnews.com**
  - **CoQ10 Helps Weak Hearts – ABCnews.com**
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Tishcon is a company dedicated to maintaining the quality of its products and the satisfaction of its customers. We are one of the very few manufacturers of vitamin and health products that manufacture 100% in-house.

We will not compromise on our service to you. We're in business to help you sell and satisfy your customers. We are the source for a full and complete line of vitamin and health supplements - tablets, softgels, hard gelatin capsules and powders, for generic and proprietary products, for stocking and display guidance, for product information and market research, packaging and labeling, and for innovative pre-packaged consumer promotions.

At Tishcon our job is to help provide better health and nutrition for our end-users. At home and worldwide through our aid and assistance efforts, we've never lost sight of the fact that our products can help create a better world.

**Our Background**

Tishcon was established in 1977

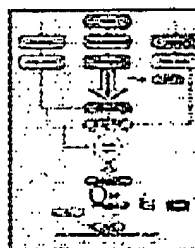
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Enter one keyword which best describes your food item or the NDB No. and submit.

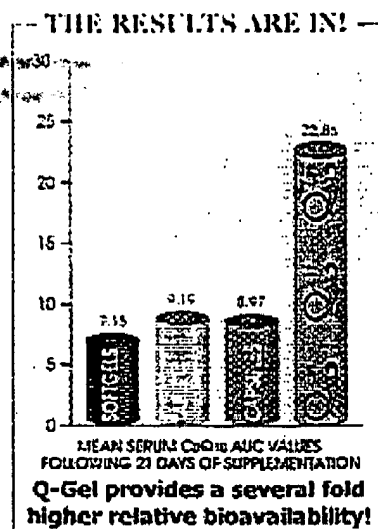
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Click above to see the significance of CoQ10 in the production of ATP (energy)

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by Raj K. Chopra, Vipin Patel, and others. Prior to establishing Tishcon, Raj Chopra was the Technical Director of PFI and taught Industrial Pharmacy at Columbia University (NY). Raj Chopra is a leading authority on health foods and vitamin supplements in the United States. He is acknowledged to be an expert in Chewable Multivitamin formulations, Timed Release formulations and Bioenhanced Supplements. Raj Chopra continues to serve as the Chairman/CEO and Chief Scientific Officer of Tishcon Corporation and Vipin Patel as President/COO.



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